IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 931 of 2006

Date of Decision : 22.6.2007

Om Dutt and another …Petitioners.

Versus:

State of H.P. & Ors. …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] No

For the petitioners: Mr. Rahul Mahajan, Advocate.

For respondents 1 to 4. Mr. J. K. Verma, Deputy Advocate General

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Sanjay Karol, J (Oral).

For the purposes of construction of Solan-Jaunaji/ Dharja road, acquisition proceedings under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') were initiated by the State Government in Village Sheel, Bhajon, Mashiwar, Nehar, Fagon, Kotla, Bagur, Layan and Ser Banera in District Solan, H.P. In terms of Award No. 28/1990, dated 31.1.1991, amongst other lands belonging to the petitioners as also the proforma respondents 5 to 7, was acquired for the aforesaid public purpose. The detail of said land

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

which was acquired, is as under:-

khata khatauni No. 43/60,

khasra No. 682/36,
(new number 682/36/1), measuring 6 biswas

and

Khasra No. 40,
(new number 40/1), measuring 1 biswa

Total land measuring 7 biswas.

The grievance of the petitioner is that the land in excess has been utilized by the respondent-State for construction of the said road without due process of law. According to him; after his legal notice dated 21st of May, 1994 was served upon the Land Acquisition Collector, the Revenue Authority got the land demarcated and in terms of report dated 6.6.1994, it was so found that the actual land utilized by the State for the said public purpose was as under:-

Khasra No. 682/36/1 measuring 1-1 bigha,
Khasra No. 39/1 measuring 0-2 biswa,
Khasra No. 40/1 measuring 0-6 biswa,
Total Land measuring 1-9 bighas.

According to him, in terms of letter dated 30th June, 1994, an inter departmental request was made by the authorities to initiate the acquisition proceedings under the Act. Since no action was taken, in accordance with law, therefore, the present writ petition has been filed seeking directions that the respondents be directed to initiate proceedings for acquisition of excess land under the Act.

On the other hand, learned Deputy Advocate General has seriously disputed the receipt of the notice and also the authenticity and veracity of demarcation report dated 6.6.1994, particularly, for the fact that demarcation was carried out in the absence of the beneficiary.

With this disputed question, without going into the factual matrix as to how much of land has been utilized by the State for the aforesaid public purpose, interest of justice would be met if the State is directed to carry out a fresh demarcation in the presence of the parties. The State is, therefore, directed to carry out a fresh demarcation, in accordance with law, after affording due opportunity to all the concerned parties. If after demarcation, it is found out that land after than the one acquired in terms of award dated 31st January, 1991 has also been utilized for the construction of the road, the respondent- State shall initiate proceedings for acquisition of the excess land in accordance with the provisions of the Act.

The respondent-State shall carry out the demarcation within a period of two months and if necessary, start acquisition proceedings under the Act within a period of two months thereafter and take them to logical end within a period of six months. The writ petition is disposed of accordingly.

(Sanjay Karol),
Judge.

June 22, 2007.
(rana)